

## Message Text

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ORIGIN EA-14

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PM:DPASSAGE (SUBSTANCE)

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EA/RA:RFINCH (SUBSTANCE)

----- 034552

P R 242217Z MAY 74

FM SECSTATE WASHDC

TO AMEMBASSY MANILA PRIORITY

INFO CINCPAC HONOLULU HI

C O N F I D E N T I A L STATE 109998

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT:MBA NEGOTIATIONS - ARTICLE XII TAXATION

REFS: A. MANILA 3366

B. MANILA 3367

CINCPAC ALSO FOR POLAD

1. THE TEXT PROPOSED FOR ARTICLE XII OF MBA IN REF B POSES SEVERAL DIFFICULTIES. THE USE OF THE TERM "CIVILIAN COMPONENT" IN PARAGRAPH 1 OF EMBASSY DRAFT RESULTS IN CIVILIAN EMPLOYEES OF USG BEING COVERED BY BOTH PARAGRAPHS 1 AND 2 OF ARTICLE XII WITH INCONSISTENT RESULTS. USE OF PHRASE "EMPLOYED BY OR UNDER A CONTRACT WITH THE UNITED STATES" IN PARAGRAPH 2 OF EMBASSY DRAFT EXCLUDES CIVILIANS  
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ACCOMPANYING U.S. FORCES WHO ARE NOT SO EMPLOYED, E.G.,

RED CROSS PERSONNEL. WE PREFER TO AVOID CONCEPT OF "PHILIPPINE SOURCE INCOME" BECAUSE PHILIPPINE COURT HAS INTERPTETED CONCEPT AGAINST OUR INTERESTS AND PHILIPPINE NEGOTIATORS HAVE RELIED IN PAST ON U.S. COURT DECISIONS ON SOURCE OF INCOME AS SUPPORT FOR THEIR POSITION. THE TERM "LOCALLY HIRED" IN PARAGRAPH 3 OF EMBASSY DRAFT IS TOO VAGUE. AS INDICATED IN REF A, A PROVISION FOR REPLACEMENT OF PERSONAL PROPERTY AFTER EXPIRATION OF NORMAL IMPORTATION PERIOD IS REQUIRED, AND WE THINK SUCH PROVISIONS SHOULD BE INCLUDED IN ARTICLE XII RATHER THAN IN AGREED MINUTE.

2. THE FIRST FALLBACK POSITION IN PARAGRAPH 4 OF REF B GOES BEYOND WHAT SHOULD BE REQUIRED TO SATISFY PHILIPPINE CONCERNS. IN ANY EVENT, WE CANNOT AGREE TO PHILIPPINE TAXATION OF PAY AND ALLOWANCES OF U.S. CITIZEN EMPLOYEES OF USG PRESENT IN PHILIPPINES ONLY IN CONNECTION WITH BASES. U.S. LAW REQUIRES PAYMENT OF U.S. INCOME TAX ON SUCH INCOME. IN ORDER TO RESERVE RIGHT TO TAX SUCH INCOME TO USG, TECHNICAL PANEL SHOULD RESIST PHILIPPINE PROPOSALS FOR TAXATION OF SALARY AND OTHER EMOLUMENTS OF U.S. CITIZEN EMPLOYEES OF USG. REQUIREMENT THAT PRESENCE IN PHILIPPINES BE BY REASON ONLY OF SERVICE OR EMPLOYMENT IN CONNECTION WITH BASES SHOULD BE ADEQUATE TO PROTECT PHILIPPINE INTERESTS IN UNUSUAL CASES. WE ARE PREPARED, HOWEVER, TO MAKE IT CLEAR THAT EXEMPTION FROM PHILIPPINE INCOME TAX DOES NOT EXTEND TO PRIVATE INVESTMENTS IN PHILIPPINES OR "MOONLIGHTING" NOT CONNECTED WITH CONSTRUCTION, MAINTENANCE, OPERATION OR DEFENSE OF BASES. WE ARE ALSO PREPARED, IN LINE WITH PROVISIONS OF OTHER SOFAS (E.G., ARTICLE XIV, PARA 7 OF JAPANESE SOFA), TO AGREE THAT INCOME OF CONTRACTOR PERSONNEL WILL BE SUBJECT TO PHILIPPINE INCOME TAX IF SUCH PERSONNEL CLAIM PHILIPPINE RESIDENCE FOR PURPOSES OF U.S. INCOME TAX.

3. NEW DRAFT ARTICLE XII QUOTED IN PARAGRAPH 4 BELOW MAY BE TABLED UPON RESUMPTION OF TECHNICAL PANEL MEETINGS. PARAGRAPH 1 OF NEW DRAFT INCORPORATES SUBSTANCE OF PRESENT PARAGRAPHS 1 AND 2 OF ARTICLE XII. PARAGRAPH 2 OF NEW DRAFT IS IN LIEU OF PRESENT PARAGRAPH 4 OF ARTICLE XII. PARAGRAPH 3 OF DRAFT IS NEW PROVISION CLARIFYING EXTENT OF CONFIDENTIAL

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EXEMPTION FROM PHILIPPINE INCOME TAXES, ALONG LINES INDICATED IN PARAGRAPH 2 OF THIS MESSAGE. PARAGRAPH 4 OF DRAFT IS IN LIEU OF PRESENT PARAGRAPH 3 OF ARTICLE XII. EMBASSY MAY WISH TO CONSIDER HOLDING SUBPARAGRAPH B OF THIS PARAGRAPH (LOCAL HIRE EXCEPTION) AS A FALLBACK POSITION.

4. PARAGRAPH 1 IS INTENDED TO INCLUDE NOT ONLY U.S. MILITARY PERSONNEL AND USG EMPLOYEES, BUT ALSO OTHERS, E.G.,

CONTRACTOR PERSONNEL, PRESENT IN PHILIPPINES ONLY BY REASON OF WORK IN CONNECTION WITH BASES. THUS, CONTRACTOR PERSONNEL WHO MEET CRITERIA OF PARAGRAPH 1 ARE ALSO ENTITLED TO BENEFITS OF PARAGRAPH 4 OF ARTICLE XII. IT SHOULD ALSO BE NOTED THAT UNDER PARAGRAPH 4(A)(1) DEPENDENTS ARE ENTITLED TO 180 DAY DUTY FREE IMPORTATION AFTER THEIR ARRIVAL.

5. FOLLOWING IS NEW DRAFT ARTICLE XII:

QUOTE 1. NO MEMBER OF THE UNITED STATES ARMED FORCES, EXCEPT FILIPINO CITIZENS, NOR ANY CIVILIAN NATIONAL OF THE UNITED STATES SERVING OR EMPLOYED IN THE PHILIPPINES IN CONNECTION WITH THE CONSTRUCTION, MAINTENANCE, OPERATION OR DEFENSE OF THE BASES AND PRESENT IN THE PHILIPPINES BY REASON ONLY OF SUCH SERVICE OR EMPLOYMENT, NOR THE DEPENDENTS OF EITHER, SHALL BE LIABLE TO PAY ANY TAX TO THE GOVERNMENT OF THE PHILIPPINES OR ANY LOCAL AUTHORITIES IN THE PHILIPPINES ON INCOME RECEIVED AS A RESULT OF SERVICE WITH OR EMPLOYMENT BY THE UNITED STATES ARMED FORCES OR OTHER SERVICE OR EMPLOYMENT IN CONNECTION WITH THE CONSTRUCTION, MAINTENANCE, OPERATION OR DEFENSE OF THE BASES, NOR SHALL ANY SUCH PERSON BE REQUIRED TO FILE A PHILIPPINE TAX RETURN WITH RESPECT TO SUCH INCOME.

QUOTE 2. NO NATIONAL OF THE UNITED STATES, OR CORPORATION ORGANIZED UNDER THE LAWS OF THE UNITED STATES, RESIDENT IN THE UNITED STATES, SHALL BE LIABLE TO PAY ANY TAX TO THE GOVERNMENT OF THE PHILIPPINES OR ANY LOCAL AUTHORITIES IN THE PHILIPPINES ON ANY INCOME DERIVED UNDER A CONTRACT WITH THE GOVERNMENT OF THE UNITED STATES IN CONNECTION WITH THE CONSTRUCTION, MAINTENANCE, OPERATION OR DEFENSE OF THE BASES, OR ANY TAX IN THE NATURE OF A LICENSE IN  
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RESPECT OF ANY SERVICE OR WORK FOR THE UNITED STATES IN CONNECTION WITH THE CONSTRUCTION, MAINTENANCE, OPERATION OR DEFENSE OF THE BASES, NOR SHALL ANY SUCH PERSON OR CORPORATION BE REQUIRED TO FILE A PHILIPPINE TAX RETURN WITH RESPECT TO SUCH INCOME.

QUOTE 3. THE PROVISIONS OF PARAGRAPH 1 AND 2 OF THIS ARTICLE DO NOT EXEMPT ANY PERSON OR CORPORATION REFERRED TO THEREIN FROM THE PAYMENT OF PHILIPPINE TAXES OR THE FILING OF A PHILIPPINE TAX RETURN WITH RESPECT TO INCOME DERIVED FROM OTHER ACTIVITIES IN THE PHILIPPINES, SUCH AS INVESTMENTS OR EMPLOYMENT IN THE PHILIPPINES WHICH ARE NOT CONNECTED WITH THE CONSTRUCTION, MAINTENANCE, OPERATION OR DEFENSE OF THE BASES, NOR DO THEY EXEMPT FROM THE PAYMENT OF PHILIPPINE TAXES OR THE FILING OF A PHILIPPINE TAX

RETURN A UNITED STATES NATIONAL OR CORPORATION REFERRED TO IN PARAGRAPH 2 OF THIS ARTICLE OR A UNITED STATES NATIONAL EMPLOYEE OF A PERSON OR CORPORATION WHO FOR THE PURPOSE OF UNITED STATES INCOME TAXES CLAIMS PHILIPPINE RESIDENCE. IN THE ABSENCE OF AN EXPRESS DECLARATION TO THE CONTRARY BY A PERSON OR CORPORATION REFERRED TO IN PARAGRAPH 1 OR 2 OF THIS ARTICLE, PERIODS DURING WHICH SUCH A PERSON OR CORPORATION IS IN THE PHILIPPINES BY REASON ONLY OF SERVICE, EMPLOYMENT, OR PERFORMANCE OF A CONTRACT IN CONNECTION WITH THE CONSTRUCTION, MAINTENANCE, OPERATION OR DEFENSE OF THE BASES, OR BY REASON OF BEING A DEPENDENT OF A PERSON SO ENGAGED, SHALL NOT BE CONSIDERED AS PERIODS OF RESIDENCE OR DOMICILE IN THE PHILIPPINES FOR THE PURPOSE OF PHILIPPINE TAXATION.

QUOTE 4. A. NO PERSON REFERRED TO IN PARAGRAPH 1 OF THIS ARTICLE SHALL BE LIABLE TO PAY TO THE GOVERNMENT OF THE PHILIPPINES OR ANY LOCAL AUTHORITIES IN THE PHILIPPINES ANY REVENUE PRODUCING CHARGES, POLL TAX, RESIDENCE TAX, IMPORT OR EXPORT DUTY, OR ANY TAX ON PERSONAL PROPERTY; PROVIDED THAT PRIVATELY OWNED VEHICLES SHALL BE SUBJECT TO PAYMENT OF THE NORMAL LICENSE PLATE AND REGISTRATION FEES. THE EXEMPTION FROM IMPORT DUTIES REFERRED TO IN THIS PARAGRAPH SHALL BE AVAILABLE ONLY FOR:

(1) PERSONAL BELONGINGS AND HOUSEHOLD EFFECTS, INCLUDING  
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MOTOR VEHICLES, PROVIDED THAT SUCH BELONGINGS OR EFFECTS ACCOMPANY THE PERSON OR ARE IMPORTED WITHIN 180 DAYS AFTER HIS ARRIVAL IN THE PHILIPPINES OR ARE FOR REPLACEMENT OF BELONGINGS OR EFFECTS ORIGINALLY IMPORTED UNDER THE ABOVE STATED CONDITIONS; AND

(2) REASONABLE QUANTITIES OF HOUSEHOLD EFFECTS AND OTHER PERSONAL ARTICLES, WHENEVER ACQUIRED, IMPORTED AFTER FIRST ARRIVAL SOLELY FOR THE PERSONAL USE OF THE RECIPIENT THROUGH AN AGENCY REFERRED TO IN ARTICLE XVIII OF THIS AGREEMENT OR A UNITED STATES MILITARY POST OFFICE. THE U.S. MILITARY AUTHORITIES SHALL ESTABLISH APPROPRIATE LIMITATIONS AND PROCEDURES TO ENSURE AGAINST ABUSES OF THE PRIVILEGES GRANTED BY THIS PARAGRAPH.

B. UNITED STATES NATIONALS REFERRED TO IN PARAGRAPH ONE OF THIS ARTICLE WHO HAVE BEEN RESIDING IN THE PHILIPPINES FOR 180 OR MORE CONSECUTIVE DAYS AT THE TIME OF THEIR FIRST SERVICE OR EMPLOYMENT IN CONNECTION WITH THE CONSTRUCTION, MAINTENANCE, OPERATION OR DEFENSE OF THE BASES ARE NOT ENTITLED TO ANY EXEMPTION UNDER THIS PARAGRAPH. CONSISTENT WITH THE LAST SENTENCE OF PARAGRAPH 3 OF THIS ARTICLE,

HOWEVER, PRESENCE IN THE PHILIPPINES AS A DEPENDENT SHALL  
NOT CONSTITUTE RESIDENCE IN THE PHILIPPINES DEPRIVING A  
DEPENDENT OF EXEMPTIONS UNDER THIS PARAGRAPH. UNQUOTE.

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## Message Attributes

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**Current Classification:** UNCLASSIFIED  
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